



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

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August 6, 2012

Levi D. Mast
4435 500 W
Shipshewana, Indiana 46565

Re: Formal Complaint 12-FC-189; Alleged Violation of the Access to Public Records Act by the LaGrange County Prosecutor's Office

Dear Mr. Mast:

This advisory opinion is in response to your formal complaint alleging the LaGrange County Prosecutor's Office ("Prosecutor") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Our office forwarded a copy of your formal complaint to the Prosecutor. As of today's date, we have yet to receive a response.

BACKGROUND

In your formal complaint, you allege that you submitted a written request to the records to the Prosecutor on June 16, 2012. As of July 5, 2012, the date you filed your formal complaint with the Public Access Counselor's Office, you provide you have yet to receive any response from the Prosecutor to your request.

ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." *See* I.C. § 5-14-3-1. The Prosecutor is a public agency for the purposes of the APRA. *See* I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Prosecutor's public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within twenty-four hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within

seven days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. *See* I.C. § 5-14-3-9(c). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. Here, you allege that the Prosecutor failed to respond in any fashion to your written request. Without the benefit of a response from the Prosecutor to your original request for records or formal complaint, it is unclear to me why your request was denied. Under the APRA, a public agency that withholds a public record bears the burden of proof to show that the record is exempt. *See* I.C. §§ 5-14-3-1, 5-14-3-9(f), (g). Exceptions to disclosure are narrowly construed. *See* I.C. § 5-14-3-1. As the Prosecutor has not provided a justification for withholding the records at issue here, it is my opinion that the agency has failed to sustain its burden under the APRA.

CONCLUSION

For the foregoing reasons, it is my opinion that the Prosecutor acted contrary to the requirements of the APRA in response to your request.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is stylized with a large initial "J" and a cursive "Hoage".

Joseph B. Hoage
Public Access Counselor

cc: LaGrange County Prosecutor's Office